



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XIV

#### INTERPRETATION

#### CHAPTER II

#### A WEEK'S PAY

##### Modifications etc. (not altering text)

- C1** Pt. XIV Ch. II (ss. 220-229) applied (with modifications) (1.8.1998) by 1992 c. 52, s. 87(8) (as substituted (1.8.1998) by 1998 c. 8, s. 6; S.I. 1998/1658, art. 2(1), Sch. 1 (with art. 3(2))  
Pt. XIV Ch. II (ss. 220-229) applied (with modifications) (4.9.2000) by 1999 c. 26, s. 11(4) (with ss. 14, 15); S.I. 2000/2242, art. 2(1)  
Pt. XIV Ch. II (ss. 220-229) applied (15.12.1999) by S.I. 1999/3312, reg. 2(2)  
Pt. XIV Ch. II (ss. 220-229) applied (with modifications) (21.6.2000) by S.I. 2000/1410, Pt. III reg. 6(4) (as amended (retrospectively) by S.I. 2002/769, regs. 1(1), 3(b) (with reg. 12))  
Pt. XIV Ch. II (ss. 220-229) applied (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, Sch. para. 122
- C2** Pt. XIV Ch. II (ss. 220-229) modified (15.12.1999) by S.I. 1999/3312, reg. 22
- C3** Pt. XIV Ch. II (ss. 220-229) extended (15.1.2000) by S.I. 1999/3323, reg. 26(2)
- C4** Pt. 14 Ch. 2 applied (with modifications) (1.10.2004) by Employment Act 2002 (c. 22), ss. 38(6)(7), 55(2); S.I. 2004/1717, art. 2(2) (subject to art. 3)
- C5** Pt. 14 Ch. 2 applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), 40(2)
- C6** Pt. 14 Ch. 2 applied (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(2), 28(2) (with reg. 3)
- C7** Pt. 14 Ch. 2 applied (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 1(2), 29(2)
- C8** Pt. 14 Ch. 2 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, Sch. 6 para. 11(4) (with regs. 44-46, Sch. 7)
- C9** Pt. 14 Ch. 2 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, Sch. 6 para. 12(4) (with regs. 44-46, Sch. 7)

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- C10** Pt. 14 Ch. 2 applied (15.12.2007) by [The Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), [reg. 44\(2\)](#)
- C11** Pt. 14 Ch. 2 applied (1.10.2009) by [The European Public Limited-Liability Company \(Employee Involvement\) \(Great Britain\) Regulations 2009 \(S.I. 2009/2401\)](#), [reg. 27\(2\)](#) (with [reg. 41](#))
- C12** Pt. 14 Ch. 2 modified (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), [reg. 17\(4\)](#)

### *Introductory*

#### **220 Introductory.**

The amount of a week’s pay of an employee shall be calculated for the purposes of this Act in accordance with this Chapter.

#### **Modifications etc. (not altering text)**

- C13** [Ss. 220-224](#) applied (with modifications) (4.3.1998) by [S.I. 1998/192](#), [reg. 37\(1\)](#)
- C14** [Ss. 220-228](#) applied (6.4.2006 with application in accordance with [reg. 21\(1\)](#) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), [regs. 1\(2\)](#), [16\(4\)](#) (with [reg. 21\(5\)](#))

### *Employments with normal working hours*

#### **221 General.**

- (1) This section and sections 222 and 223 apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.
- (2) Subject to section 222, if the employee’s remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week’s pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.
- (3) Subject to section 222, if the employee’s remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the period, the amount of a week’s pay is the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks ending—
  - (a) where the calculation date is the last day of a week, with that week, and
  - (b) otherwise, with the last complete week before the calculation date.
- (4) In this section references to remuneration varying with the amount of work done includes remuneration which may include any commission or similar payment which varies in amount.
- (5) This section is subject to sections 227 and 228.

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**Modifications etc. (not altering text)**

- C15** Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**
- C16** Ss. 221-224 applied (with modifications) (24.12.2003) by **The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003** (S.I. 2003/3049), **reg. 11(4)**
- C17** Ss. 221-224 applied (with modifications) (16.8.2004) by **The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004** (S.I. 2004/1713), regs. 1, 4, **11(4)**
- C18** Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by **The Transfer of Undertakings (Protection of Employment) Regulations 2006** (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

**222 Remuneration varying according to time of work.**

- (1) This section applies if the employee is required under the contract of employment in force on the calculation date to work during normal working hours on days of the week, or at times of the day, which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of those days or times.
- (2) The amount of a week’s pay is the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration.
- (3) For the purposes of subsection (2)—
  - (a) the average number of weekly hours is calculated by dividing by twelve the total number of the employee’s normal working hours during the relevant period of twelve weeks, and
  - (b) the average hourly rate of remuneration is the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of twelve weeks.
- (4) In subsection (3) “the relevant period of twelve weeks” means the period of twelve weeks ending—
  - (a) where the calculation date is the last day of a week, with that week, and
  - (b) otherwise, with the last complete week before the calculation date.
- (5) This section is subject to sections 227 and 228.

**Modifications etc. (not altering text)**

- C19** Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**
- C20** Ss. 221-224 applied (with modifications) (24.12.2003) by **The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003** (S.I. 2003/3049), **reg. 11(4)**
- C21** Ss. 221-224 applied (with modifications) (16.8.2004) by **The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004** (S.I. 2004/1713), regs. 1, 4, **11(4)**
- C22** Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by **The Transfer of Undertakings (Protection of Employment) Regulations 2006** (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

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## 223 Supplementary.

- (1) For the purposes of sections 221 and 222, in arriving at the average hourly rate of remuneration, only—
  - (a) the hours when the employee was working, and
  - (b) the remuneration payable for, or apportionable to, those hours,
 shall be brought in.
- (2) If for any of the twelve weeks mentioned in sections 221 and 222 no remuneration within subsection (1)(b) was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.
- (3) Where—
  - (a) in arriving at the average hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and
  - (b) the amount of that remuneration was greater than it would have been if the work had been done in normal working hours (or, in a case within section 234(3), in normal working hours falling within the number of hours without overtime),
 account shall be taken of that remuneration as if the work had been done in such hours and the amount of that remuneration had been reduced accordingly.

### **Modifications etc. (not altering text)**

- C23** Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**
- C24** Ss. 221-224 applied (with modifications) (24.12.2003) by *The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003* (S.I. 2003/3049), **reg. 11(4)**
- C25** Ss. 221-224 applied (with modifications) (16.8.2004) by *The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004* (S.I. 2004/1713), regs. 1, 4, **11(4)**
- C26** Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by *The Transfer of Undertakings (Protection of Employment) Regulations 2006* (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

### *Employments with no normal working hours*

## 224 Employments with no normal working hours.

- (1) This section applies where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.
- (2) The amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve weeks ending—
  - (a) where the calculation date is the last day of a week, with that week, and
  - (b) otherwise, with the last complete week before the calculation date.
- (3) In arriving at the average weekly remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to twelve the number of weeks of which account is taken.

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(4) This section is subject to sections 227 and 228.

**Modifications etc. (not altering text)**

- C27** Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**
- C28** Ss. 221-224 applied (with modifications) (24.12.2003) by **The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), reg. 11(4)**
- C29** Ss. 221-224 applied (with modifications) (16.8.2004) by **The Fishing Vessels (Working Time: Seafishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 4, 11(4)**
- C30** Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by **The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), 16(4) (with reg. 21(5))**

*The calculation date*

**225 Rights during employment.**

- (1) Where the calculation is for the purposes of section 30, the calculation date is—
- where the employee’s contract has been varied, or a new contract entered into, in connection with a period of short-time working, the last day on which the original contract was in force, and
  - otherwise, the day in respect of which the guarantee payment is payable.
- (2) Where the calculation is for the purposes of section 53 or 54, the calculation date is the day on which the employer’s notice was given.
- (3) Where the calculation is for the purposes of section 56, the calculation date is the day of the appointment.
- (4) Where the calculation is for the purposes of section 62, the calculation date is the day on which the time off was taken or on which it is alleged the time off should have been permitted.
- [<sup>F1</sup>(4A) Where the calculation is for the purposes of section 63B, the calculation date is the day on which the time off was taken or on which it is alleged the time off should have been permitted.]
- (5) Where the calculation is for the purposes of section 69—
- in the case of an employee suspended on medical grounds, the calculation date is the day before that on which the suspension begins, and
  - in the case of an employee suspended on maternity grounds, the calculation date is—
    - [<sup>F2</sup>(i) where the day before that on which the suspension begins falls during a period of ordinary or additional maternity leave, the day before the beginning of that period,]
    - (ii) otherwise, the day before that on which the suspension begins.
- [<sup>F3</sup>(6) Where the calculation is for the purposes of section 80I, the calculation date is the day on which the application under section 80F was made.]

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#### Textual Amendments

- F1** S. 225(4A) inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 14** (with s. 42(8)); S.I. 1999/987, **art. 2**
- F2** S. 225(5)(b)(i) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 39**; S.I. 1999/2830, **art. 2(2)**, **Sch. 1 Pt. II** (with **Sch. 3 paras. 10, 11**)
- F3** S. 225(6) inserted (6.4.2003) by **Employment Act 2002 (c. 22)**, s. 53, **Sch. 7 para. 45**; S.I. 2002/2866, **art. 2(3)**, **Sch. 1 Pt. 3**

#### Modifications etc. (not altering text)

- C31** Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by **The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246)**, **regs. 1(2), 16(4)** (with **reg. 21(5)**)

## 226 Rights on termination.

- (1) Where the calculation is for the purposes of section 88 or 89, the calculation date is the day immediately preceding the first day of the period of notice required by section 86(1) or (2).
- (2) Where the calculation is for the purposes of section 93, 117 or 125, the calculation date is—
  - (a) if the dismissal was with notice, the date on which the employer’s notice was given, and
  - (b) otherwise, the effective date of termination.
- (3) Where the calculation is for the purposes of section 119 [<sup>F4</sup>, 121 or 127A], the calculation date is—
  - <sup>F5</sup>(a) .....
  - (b) if by virtue of subsection (2) or (4) of section 97 a date later than the effective date of termination as defined in subsection (1) of that section is to be treated for certain purposes as the effective date of termination, the effective date of termination as so defined, and
  - (c) otherwise, the date specified in subsection (6).
- (4) Where the calculation is for the purposes of section 147(2), the calculation date is the day immediately preceding the first of the four, or six, weeks referred to in section 148(2).
- (5) Where the calculation is for the purposes of section 162, the calculation date is—
  - <sup>F5</sup>(a) .....
  - (b) if by virtue of subsection (5) of section 145 a date is to be treated for certain purposes as the relevant date which is later than the relevant date as defined by the previous provisions of that section, the relevant date as so defined, and
  - (c) otherwise, the date specified in subsection (6).
- (6) The date referred to in subsections (3)(c) and (5)(c) is the date on which notice would have been given had—
  - (a) the contract been terminable by notice and been terminated by the employer giving such notice as is required by section 86 to terminate the contract, and
  - (b) the notice expired on the effective date of termination, or the relevant date,

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(whether or not those conditions were in fact fulfilled).

#### Textual Amendments

- F4** Words in s. 226(3) substituted (1.1.1999) by 1998 c. 8, s. 15, **Sch. 1 para. 26**; S.I. 1998/1658, art. 2(3), **Sch. 3** (with art. 3(6))
- F5** S. 226(3)(a)(5)(a) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 40, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

#### Modifications etc. (not altering text)

- C32** Ss. 226-229 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

### *Maximum amount of week’s pay*

#### **227 Maximum amount.**

(1) For the purpose of calculating—

[<sup>F6</sup>(za) an award of compensation under section 80I(1)(b),]

- (a) a basic award of compensation for unfair dismissal,
- (b) an additional award of compensation for unfair dismissal, or
- (c) a redundancy payment,

the amount of a week’s pay shall not exceed [<sup>F7</sup>£270] .

<sup>F8</sup>(2) .....

<sup>F8</sup>(3) .....

<sup>F8</sup>(4) .....

#### Textual Amendments

- F6** S. 227(1)(za) inserted (6.4.2003) by **Employment Act 2002 (c. 22)**, s. 53, **Sch. 7 para. 47(2)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3
- F7** Word in s. 227(1) substituted (1.2.2004) by **Employment Rights (Increase of Limits) Order 2003 (S.I. 2003/3038)**, **art. 3**, {Sch. } (subject to art. 4)
- F8** S. 227(2)-(4) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b)(c), **Sch.**

#### Modifications etc. (not altering text)

- C33** Ss. 226-229 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**
- C34** S. 227(1): power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(e)**; S.I. 1999/3374, **art. 2(a)**  
S. 227(1) applied (4.9.2000) by 1999 c. 26, **s. 11(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2(1)**
- C35** S. 227(1)(c) excluded (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

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### Miscellaneous

#### 228 New employments and other special cases.

- (1) In any case in which the employee has not been employed for a sufficient period to enable a calculation to be made under the preceding provisions of this Chapter, the amount of a week’s pay is the amount which fairly represents a week’s pay.
- (2) In determining that amount the [<sup>F9</sup>employment tribunal]—
  - (a) shall apply as nearly as may be such of the preceding provisions of this Chapter as it considers appropriate, and
  - (b) may have regard to such of the considerations specified in subsection (3) as it thinks fit.
- (3) The considerations referred to in subsection (2)(b) are—
  - (a) any remuneration received by the employee in respect of the employment in question,
  - (b) the amount offered to the employee as remuneration in respect of the employment in question,
  - (c) the remuneration received by other persons engaged in relevant comparable employment with the same employer, and
  - (d) the remuneration received by other persons engaged in relevant comparable employment with other employers.
- (4) The Secretary of State may by regulations provide that in cases prescribed by the regulations the amount of a week’s pay shall be calculated in such manner as may be so prescribed.

#### Textual Amendments

**F9** Words in s. 228(2) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

#### Modifications etc. (not altering text)

**C36** Ss. 226-229 applied (with modifications) (4.3.1998) by S.I. 1998/192, reg. 37(1)

**C37** Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), 16(4) (with reg. 21(5))

#### 229 Supplementary.

- (1) In arriving at—
  - (a) an average hourly rate of remuneration, or
  - (b) average weekly remuneration,
 under this Chapter, account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Chapter I of this Part, a period of employment with the former employer counts as part of the employee’s continuous period of employment.
- (2) Where under this Chapter account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other



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payments are calculated, the remuneration or other payments shall be apportioned in such manner as may be just.

**Modifications etc. (not altering text)**

**C38** Ss. 226-229 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

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